

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JASON M. ALLEN
United States Air Force

ACM 36479

26 July 2007

Sentence adjudged 23 August 2005 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: William M. Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Major Anniece Barber.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Nurit Anderson.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

JACOBSON, Senior Judge:

In accordance with his pleas, the appellant was found guilty of wrongfully and knowingly possessing computer hard drives containing visual depictions of minors engaged in sexually explicit conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to his pleas, the appellant was found guilty of wrongfully and knowingly possessing a computer hard drive containing visual depictions of adults engaging in sexual activities with an animal in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 1 year, reduction to the grade of E-1, and total forfeitures of all pay and allowances. The convening authority approved the findings and sentence as adjudged.

The appellant asks that we find the evidence to be legally and factually insufficient to support his conviction on the contested specification. Finding his assertion of error to be without merit, we affirm.

In accordance with Article 66(c), UCMJ, 10 USC § 866(c), we review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002).

The test for legal sufficiency of the evidence is “whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt.” *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987) (Citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In resolving questions of legal sufficiency, we are “bound to draw every reasonable inference from the evidence in the record in favor of the prosecution.” *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). Our assessment of legal sufficiency is limited to the evidence produced at trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993).

We have considered the evidence produced at trial in a light most favorable to the government, and find a reasonable factfinder could have found all of the essential elements of Specification II of the Charge beyond a reasonable doubt. While the appellant avers the government failed to prove that he had knowledge of the illegality of his actions, that his actions were service discrediting or prejudicial to good order and discipline, and that he possessed more than one depiction of adults engaging in sexual activities with an animal, we find at least some evidence in the record to support each of these alleged deficiencies. The record includes testimony that the appellant was put on notice that some of his files were inappropriate, that he attempted to delete inappropriate files while preserving other files (e.g. music files), that he viewed at least one of the bestiality videos twice, that he brought the computer containing the files to another service member who repaired it in the presence of others, and that the appellant shared his files over the internet to fellow members of a file-sharing service. The appellant also conceded that possession of such files could be considered prejudicial to good order and discipline and service discrediting.

As to the issue of multiple bestiality files, a government witness testified that a shortcut file found on the appellant’s computer indicted that the actual video file had at one point existed in the computer and had been viewed. This witness, in cross-examination, agreed it was possible the shortcut could have led to an empty file. However, in viewing the evidence in a light most favorable to the prosecution, as we must in legal sufficiency analysis, we find that a reasonable factfinder could find that the appellant possessed more than one depiction of adults

engaging in sex with an animal. Thus, we find the appellant's conviction to be legally sufficient.

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses [we] are [ourselves] convinced of the accused's guilt beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Review of the evidence is limited to the entire record, which includes only the evidence admitted at trial and exposed to cross-examination. Article 66(c), UCMJ; *United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973). We have carefully considered the evidence under this standard and find ourselves convinced beyond a reasonable doubt that the accused is guilty of Specification II of the Charge.

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator

